



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

MEMORANDUM

BETH NAGUSKY
ACTING COMMISSIONER

TO: Board of Environmental Protection

FROM: Becky Blais and James Cassida, Bureau of Land and Water Quality

RE: Evergreen Wind Power III, LLC, Lincoln, Lee, Winn, Burlington and Mattawamkeag,
Maine, L024402-24-A-N, L-24402-TH-B-N, L-24402-IW-C-N
Petition to Modify, Revoke or Suspend

DATE: October 7, 2010

Background

The Board received a petition dated September 15, 2010 from Lynne Williams on behalf of Larry Arthurs, George Birmingham, Bradbury Blake, Kristi Birmingham, Mike DiCenso, Harry Epp, Roderick Forrey, Joanne Hinkelman, Kathi Hinkelman-Emery, Gordan Johnson, Rick Kaul, Dennis Mahar, Karl McGillvray, Marge Mitchell, Mary Beth Nolette, Don Smith, and Dr. Gary Steinberg. The petitioners are asking the Board to revoke the Site Location of Development Act and both Natural Resources Protection Act (NRPA) permits for the construction of the Rollins Wind Project in the Towns of Lincoln, Lee, Winn, Burlington, and Mattawamkeag. The applications are for the construction of a 60-megawatt (MW) wind energy generation facility. The proposed wind generation facility includes the construction of two wind turbine clusters; the construction and upgrade of two permanent access roads; forty turbine pads; four permanent meteorological towers; a 43,200 square foot electrical substation; a 34.5 kV overhead collector line among the turbines; a 34.5 kV, 5.4 mile connector line between the North and South portions of the project; a 115 kV, 8.8 mile transmission line; and a 9,000 square foot Operations and Maintenance (O & M) facility. The proposed Rollins Wind Project is an expedited wind energy development as defined by 35-A M.R.S. § 3451 (4).

By letter dated September 22, 2010, Gordon Smith of Verrill Dana, LLP submitted a response to the petition on behalf Evergreen Wind Power III, LLC.

A staff memorandum addressing the issues raised in the petition, the petition, and the licensee's response to the petition are provided for your review.

Statutory and Regulatory Provisions Governing Petitions

State law, at 38 MRSA § 341-D(3), provides that, after written notice and opportunity for hearing, the Board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the Board finds that one of the following criteria are met:

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- C. The licensed discharge or activity poses a threat to human health or the environment;
- D. The license fails to include any standard or limitation legally required on the date of issuance;
- E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license;
- F. The licensee has violated any law administered by the department; or
- G. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

Section 27 of the Department's Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters provides that any person may petition the Board to modify, revoke or suspend a license. Unless otherwise provided by law, no later than 30 days following the filing of such a petition, and after notice and opportunity for the petitioner and the licensee to be heard, the Board shall dismiss the petition or schedule a hearing on the petition.

Whether to dismiss the petition or proceed to an adjudicatory hearing is discretionary with the Board.

Issue before the Board

The issue before the Board today is whether to dismiss the petition or schedule a public adjudicatory hearing on the matter. In making its decision, the Board may consider whether the petition describes a sufficient factual basis (with reference to the statutory criteria for modification, revocation or suspension) that, if proven at hearing, would support modification, revocation, or suspension of the license or corrective action.

Department Recommendation

The Rollins Wind project is not currently in operation. For the reasons set forth in the proposed Board Order of Dismissal, it is the Department's position that the Petitioners arguments and offer of evidence are not sufficient to support granting the Petitioner's request that the Board consider the scheduling of a public hearing or the revocation or suspension of the Department license "L-24402-24-A-N, L-24402-TH-B-N and L-24402-IW-C-N approving the construction of the Rollins Wind Project.

The Department recommends that the Board deny the petition to revoke or suspend the Department license "L-24402-24-A-N, L-24402-TH-B-N and L-24402-IW-C-N for the Rollins Wind Project.

Estimated Time of Presentation 1 hour